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## COMMENTS

### WAGE GARNISHMENT: STILL DRIVING THE WAGE-EARNING FAMILY TO THE WALL

#### INTRODUCTION

In ancient Rome, a defaulting debtor faced one of two possible fates at the option of his creditors; his body could be divided into pieces in proportion to the amount he owed each creditor or he could be sold into slavery.<sup>1</sup> Creditors' remedies have since undergone drastic evolution, but the underlying thought remains: a man has a duty to pay back his debts. Should the debtor fail to willingly repay his debts, societal laws will support the creditor in his attempt to coerce repayment. The moral underpinnings of laws to aid the creditor against the defaulting debtor have been clear throughout history. During the decline of feudalism, for example, insolvency was a mortal sin.<sup>2</sup> Debtors were excommunicated from the church and barred from receiving the sacraments or a Christian burial.<sup>3</sup>

In the United States, it was not until the nineteenth century that imprisonment of the defaulting debtor began to wane.<sup>4</sup> As the self-defeating nature of debtor's prison became

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1. This rather harsh election of remedies by the creditor was the law under the Twelve Tables of Rome. H. JOLOWICZ, *HISTORICAL INTRODUCTION TO THE STUDY OF ROMAN LAW* 190-92 (2d ed. 1952); R. LEE, *THE ELEMENTS OF ROMAN LAW* 427-28 (4th ed. 1956); Ford, *Imprisonment for Debt*, 25 MICH. L. REV. 24, 24-25 (1926).

2. In general, all attempted reforms of imprisonment for debt were resisted by the clergy. In some regions, the priest who absolved a dying debtor became liable for his debts. See Ford, *Imprisonment for Debt*, 25 MICH. L. REV. 24, 25-26 (1926).

3. *Id.*

4. *Id.* 25-33. It was not until the 1830's that state constitutional amendments abolishing imprisonment of defaulting debtors were enacted. New York passed such a statute in 1831. Act of April 26, 1831, ch. 300, 1831 N.Y. Laws 396. See Note, *Arrest and Imprisonment in Civil Actions in New York*, 26 N.Y.U.L. REV. 172 (1951). Other states soon followed with similar amendments. See, e.g., ALA. CONST. art. I, § 20; CAL. CONST. art. I, § 15 (the California Constitution forbids imprisonment for debt in any civil action except in cases involving fraud or wilful injury to person or property); GA. CONST. art. I, § 1, cl. 21 (Georgia was founded specifically as a place where debtors would be given a fresh start); MD. CONST. art. III, § 38.

Until 1971, Maine still allowed imprisonment for failure to pay civil debts. Maine's statute, which was amended in 1971 by adding the word "not" and deleting the second sentence, read as follows: "In any civil action, except where express provision is made by law to the contrary, an execution shall [not] run against the body of the judgment debtor. He may be arrested and imprisoned thereon for the purpose of obtaining a discovery of his property wherewith to satisfy it." ME. REV. STAT. tit. 14, § 3701 (1964) (amended 1971).

apparent, other creditors' remedies had to be devised to effectively coerce the balking debtor. One such measure was garnishment, a procedure of attaching property belonging to or owing to the debtor but in the possession of a third party.

The plaintiff in a garnishment action does not acquire a full and clear lien on specific property in possession of a third party (garnishee), but only the right to hold the garnishee personally liable for it or for its value.<sup>5</sup> Wage garnishment refers to the common situation where the property to be garnished consists of wages owed to the debtor by his employer.<sup>6</sup>

This comment examines the effects of the existing federal and California wage garnishment laws upon the defaulting

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5. Garnishment is not synonymous with attachment—a popular misconception—both measures are purely statutory creations and each is defined by the state creating them. *See, e.g., Sanders v. Armour Fertilizer Works*, 292 U.S. 190 (1934).

Attachment is a prejudgment remedy whereby a plaintiff can seize control of defendant's property for use as security for a judgment in a subsequent action. It is not to be confused with either execution (seizure of defendant's property after a judgment) or with replevin or claim and delivery (seizure of property in possession of defendant in which plaintiff claims a specific property interest). *See CAL. CIV. PROC. CODE* §§ 481.010-92.090 (West Supp. 1977) (operative January 1, 1977). *See generally* Recommendation Relating to Revision of the Attachment Law, to appear in 13 CALIFORNIA LAW REVISION COMM'N, REPORTS, RECOMMENDATIONS & STUDIES 801 (1975). Fainer, *The Prejudgment Attachment Remedy in California*, 51 L.A. B.J. 95 (1975); Note, *Attachment in California: A New Look at an Old Writ*, 22 STAN. L. REV. 1254 (1970); Comment, *Attachment and Garnishment in California—In Need of Reform*, 4 U.C.D.L. REV. 57 (1971) [hereinafter cited as Comment, *California Garnishment*]; Comment, *California's New Attachment Law: Problems in Interpretation*, 23 U.C.L.A. L. REV. 792 (1976).

Whereas garnishment reaches the goods, chattels, credits or effects the debtor in the hands of a third person, attachment involves only the rights of a creditor in the property of his debtor. *See Kimball v. Richardson Kimball Co.*, 111 Cal. 386, 43 P. 1111 (1896); *Meacham v. Meacham*, 262 Cal. App. 248, 68 Cal. Rptr. 746 (1968); *Steineck v. Haas-Baruch Co.*, 106 Cal. App. 228, 288 P. 1104 (1930); *Finch v. Finch*, 12 Cal. App. 274, 107 P. 594 (1909), *hearing denied*, 12 Cal. App. 285, 107 P. 598 (1910).

6. The question then arises as to what constitutes a "debt" other than wages already earned and owing to the debtor. A debt that is uncertain and contingent in the sense that it may never become due and payable is not subject to garnishment. *Thomas v. Thomas*, 192 Cal. App. 2d 771, 13 Cal. Rptr. 872 (1961); *Dawson v. Bank of America Nat'l Trust & Savings Ass'n*, 100 Cal. App. 2d 305, 223 P.2d 280 (1950); *Clecak v. Dunn*, 95 Cal. App. 537, 272 P. 1104 (1928). However, a debt that is not uncertain but is simply not yet due is subject to garnishment. The money must be fully earned but not payable until a future time, *Philbrook v. Mercantile Trust Co.*, 84 Cal. App. 187, 257 P. 882 (1927), and it is not essential that there be a present right to sue. *Meacham v. Meacham*, 262 Cal. App. 2d 248, 68 Cal. Rptr. 746 (1968); *Brianard v. Rogers*, 74 Cal. App. 247, 239 P. 1095 (1925). As a general rule, a claim for unliquidated damages, such as a claim for tort damages, is not a debt and may not be garnished. 6 AM. JUR. 2d *Attachment and Garnishment* § 127 (1963). Nor is a debt conditioned on further performance before payment is due subject to garnishment until the condition is fulfilled. *Id.* § 129; *see Annot.*, 12 A.L.R.2d 787 (1950).

debtor in an attempt to assess whether those effects are consistent with the purposes for enacting such laws.

### HISTORICAL PERSPECTIVE

Garnishment procedure, under the guise of attachment, first made its debut in American statutory law in Maryland in 1683<sup>7</sup> and Pennsylvania in 1699;<sup>8</sup> it soon became one of the most popular devices in the creditors' arsenal of remedies.<sup>9</sup> In the early 1800's, however, garnishment was far from the power-

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7. In 1683, the province of Maryland passed an act which regulated attachment proceedings against absentee defendants when third persons had "goods, chattels or credits" of that defendant in their possession. The liability of such third persons, called "garnishees," was detailed by the statute. Mussman & Riesefeld, *Garnishment and Bankruptcy*, 27 MINN. L. REV. 1, 11 n.40 (1943).

8. In 1699, Pennsylvania, under the proprietary government of William Penn, enacted its first statute which regulated the attachment of assets in the hands of either the debtor or third persons, who were referred to as garnishees. See *id.* at 12 n.41 (1943), citing CHARTER TO WILLIAM PENN AND LAWS OF THE PROVINCE OF PENNSYLVANIA 289 (1879). Attachments had been authorized by the Duke of York's Laws (1663) which William Penn made applicable to the colony in 1676. *Id.*, citing CHARTER TO WILLIAM PENN AND LAWS OF THE PROVINCE OF PENNSYLVANIA 10 (1879).

Other states and territories followed suit with similar statutory enactments in the late 1700's and early 1800's. *Id.*, at 12-17. For a general history of the development of garnishment laws in the United States, see Riesefeld, *Collection of Money Judgments in American Law—A Historical Inventory & a Prospectus*, 42 IOWA L. REV. 155 (1957).

9. For an example of other common remedies, see 11 U.S.C. §§ 3, 4(b) (1970) (petitions for involuntary bankruptcy under the Bankruptcy Act); CAL. CIV. PROC. CODE §§ 481.010-492.090 (West Supp. 1977) (attachment); *id.* § 486.010 (temporary restraining order); *id.* §§ 509-521 (claim and delivery); *id.* §§ 681-713.5 (execution); *id.* §§ 1132-1135 (cognovit notes); CAL. COM. CODE § 9-503 (West 1964) (self-help repossession). See generally D. COWANS, *BANKRUPTCY LAW AND PRACTICE* 882 (1963); Annot., 45 A.L.R.3D 1233 (1972); 16 CAL. JUR. 3D *Creditors' Rights and Remedies* §§ 1-519 (1974); Alexander, *Cutting the Gordian Knot: State Action and Self-Help Repossession*, 2 HASTINGS CONST. L.Q. 893 (1975); Broker, *The Practical Aspects of Claim and Delivery*, 51 L.A. B. BULL. 121 (1975); Catz & Robinson, *Due Process and Creditor's Remedies: From Sniadach and Fuentes to Mitchell, North Georgia and Beyond*, 28 RUTGERS L. REV. 541 (1975); Fainer, *The Prejudgment Attachment Remedy in California*, 51 L.A.B.J. 95 (1975); Johnson, *Denial of Self-Help Repossession: An Economic Analysis*, 47 S. CAL. L. REV. 82 (1973); McCall, *The Past as Prologue: A History of the Right to Repossess*, 47 S. CAL. L. REV. 58 (1973); Ordin, *Summary Creditor Remedies: A Thing of the Past?*, 47 L.A.B.J. 230 (1972); Note, *Cognovit Judgments: Some Constitutional Considerations*, 70 COLUM. L. REV. 1118 (1970); Comment, *Due Process and the Creditor's Right to Prejudgment Seizure*, 10 GONZAGA L. REV. 757 (1975); Comment, *The Demise of Summary Prejudgment Remedies in California*, 23 HASTINGS L.J. 489 (1972); Note, *Confessions of Judgement*, 102 U. PA. L. REV. 524 (1954); Note, *Summary Creditor Remedies: Going, Going, Gone?*, 10 SAN DIEGO L. REV. 292 (1973); Comment, *Confessions of Judgment: The Due Process Defects*, 43 TEMP. L.Q. 279 (1970); Comment, *Attachment in California: Another Round of Creditor's Rights and Debtor Protection*, 20 U.C.L.A. L. REV. 1015 (1973); Comment, *California's New Attachment Law: Problems in Interpretation*, 23 U.C.L.A. L. REV. 792 (1976).

ful creditor remedy that it is today. The colonial and rural creditor knew his customers personally and extended credit on that basis. Because of his personal knowledge, he was apt to know the reasons why a person could not repay his debt on time and, therefore, he was less likely to resort to as harsh and impersonal a collection device as garnishment.<sup>10</sup>

Wage garnishment has since grown in significance as a creditor remedy and can best be understood in view of this country's change from a rural nation of farmers and self-employed shopkeepers to the urban nation of wage-earners it is now.<sup>11</sup> The creditor today no longer *knows* the person with whom he is dealing; he must rely upon impersonal financial data and must resort, when necessary, to routine collection devices which are inflexible when applied to the individual. Accompanying rapid urbanization was the boom in the use of credit by the average American consumer and the disappearance of the social stigma of personal debt. For evidence of this change in societal attitudes toward indebtedness, one needs only to look at the growing amounts of consumer credit. In 1945, for example, outstanding consumer credit in the United States totalled \$5.7 billion.<sup>12</sup> By June, 1975, however, consumer credit had burgeoned to a staggering \$186.1 billion—approximately \$874.53 for every individual in the United States.<sup>13</sup> In 1974, of the \$166.5 billion extended in installment credit only \$157.8 billion was repaid, leaving an outstanding balance of \$8.7 billion.<sup>14</sup> Outstanding installment credit for 1975 has

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10. See Patterson, *Forward: Wage Garnishment—An Extraordinary Remedy Run Amok*, 43 WASH. L. REV. 735 (1968).

11. Evidence of this country's transition from its agricultural base to its present industrial one has been agriculture's steadily decreasing share of the total employment—41% in 1900 to 4% in 1970.

12. 55 FED. RES. BULL., Jan., 1969, at A52.

13. THE CONFERENCE BOARD, A GUIDE TO CONSUMER MARKETS 1975/76, at 147 (1975). In 1950, total outstanding consumer credit (installment and noninstallment) was \$21.5 billion; in 1960, \$56.1 billion; in 1965, \$89.9 billion; and in 1970, \$127.2 billion. *Id.* The outstanding consumer credit peaked at \$190.1 billion by June, 1974, and dropped slightly to \$186.1 billion by June, 1975. *Consumer Credit Statistics*, THE WORLD ALMANAC & BOOK OF FACTS 71 (1976). The amount of credit outstanding per individual is based upon a United States population of 212.8 million, as estimated by Vincent P. Barabba, director of the U.S. Bureau of the Census, as of Jan. 1, 1975. Barabba, *United States Population*, THE WORLD ALMANAC & BOOK OF FACTS 201 (1976).

14. THE CONFERENCE BOARD, A GUIDE TO CONSUMER MARKETS 1975/76 at 148 (1975). Since 1968, The Conference Board illustrated the difference between the amounts of installment credit extended and repaid by the following table:

been estimated at approximately \$2,000 per household in the country.<sup>15</sup>

As is apparent from these figures, the consumer credit industry is "big business." As a result, collection remedies, especially wage garnishment, have increased in importance. No national statistics on the exact numbers of wage garnishments are kept since the procedure is handled by thousands of fragmented local courts, but a study in Chicago revealed a jump in garnishments in that city from 64,000 in 1960 to 78,000 in 1969.<sup>16</sup> Although the growth of credit has stimulated the economy and raised the standard of living by giving the average consumer a discretionary source of buying power he never before enjoyed, the continually increasing number of garnishments attest to the social problems attached to such growth. The overextended or defaulting debtor is the unfortunate by-product of a nation which has gone virtually credit-happy.

Because garnishment has become so powerful a creditor

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Installment Credit Extended And Repaid  
(Billions of dollars)

	Extended	Repaid	Net Change
1968	100.0	91.7	8.3
1969	109.1	99.8	9.4
1970	112.2	107.2	5.0
1971	124.3	115.0	9.2
1972	143.0	126.9	16.0
1973	165.1	145.0	20.1
1974	166.5	157.8	8.7

15. D. CAPLOVITZ, *CONSUMERS IN TROUBLE: A STUDY OF DEBTORS IN DEFAULT* 1 (1974) [hereinafter cited as CAPLOVITZ]. Installment credit as of June, 1975, excluding mortgage debts and noninstallment debts such as charge accounts, totalled \$152.7 billion. *Consumer Credit Statistics*, THE WORLD ALMANAC & BOOK OF FACTS 71 (1976). Caplovitz used \$129 billion as the basis of his estimate.

16. CAPLOVITZ, *supra* note 15, at 1. The number of garnishments in Chicago reached a peak of 87,000 in 1966. *Id.*

The Cook County Circuit Court in Chicago issued 84,513 garnishments in 1965, representing a 15% increase over the number issued in 1964 and 72% more than in 1961. In Los Angeles County, the marshal of the municipal courts served 114,972 wage garnishments in 1965, an increase of 6% over 1964. Garnishments in early 1966 in Los Angeles County were running at an annual rate of 122,000. *Consumer Credit Protection Act: Hearings on H.R. 11601 Before the Subcomm. on Consumer Affairs of the House Comm. on Banking and Currency*, 90th Cong., 1st Sess. 765 (1967) (article by James P. Gannon, staff reporter of the *Wall Street Journal*) [hereinafter cited as *Hearings on H.R. 11601*].

remedy and because wages have been recognized by the United States Supreme Court as a special type of property,<sup>17</sup> restrictions have been placed by both state and federal legislatures on how much and under what circumstances a creditor can deprive a debtor of his present salary to pay a past obligation.

### RESTRICTIONS ON WAGE GARNISHMENT

#### *Prejudgment*

In June, 1969, the United States Supreme Court decided *Sniadach v. Family Finance Corp.* and held that prejudgment attachment of wages without notice and an opportunity to be heard constituted a taking of property in violation of the due process clause of the fourteenth amendment.<sup>18</sup> The *Sniadach* decision marked the beginning of extensive constitutional attacks on prejudgment creditor remedies throughout the country. Six months later, the California Supreme Court decided *McCallop v. Carberry*<sup>19</sup> and, on a procedural due process basis similar to the one used by the United States Supreme Court in *Sniadach*, struck down the California prejudgment wage garnishment statute.<sup>20</sup> Not only was California's wage garnishment statute declared unconstitutional, but the state's claim and delivery and attachment laws were similarly held violative of due process.<sup>21</sup> The net effect is that prejudgment wage garnishments are now unworkable.

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17. In *Sniadach v. Family Fin. Corp.*, 395 U.S. 337 (1969), a Wisconsin prejudgment garnishment procedure which deprived plaintiff of her wages prior to notice and opportunity to be heard was held to be violative of due process absent any extraordinary circumstances. Justice Douglas, speaking for the majority, said, "We deal here with wages, a specialized type of property presenting distinct problems in our economic system." *Id.* at 340.

18. 395 U.S. 337 (1969).

19. 1 Cal. 3d 903, 464 P.2d 122, 83 Cal. Rptr. 666 (1970); see also *Cline v. Credit Bureau*, 1 Cal. 3d 908, 464 P.2d 125, 83 Cal. Rptr. 669 (1970).

20. At the time of *McCallop*, California Civil Procedure Code §§ 537 and 538 provided that a writ of attachment could be issued upon wages to the limit of the exemption provided for in § 690.11 without a judgment or judicial hearing. The California legislature responded to the *McCallop* decision and added § 690.6 to the Code of Civil Procedure; its purpose was to exempt from levy of statement "all earnings" of the debtor derived from his personal services. 1970 Cal. Stats. ch. 1523, § 19. See note 29 *infra* for text of § 690.6.

For a summary of pre-amendment California garnishment procedures, see Brunn, *Wage Garnishment in California: A Study and Recommendations*, 53 CALIF. L. REV. 1214 (1965) [hereinafter cited as Brunn].

21. See *Fuentes v. Shevin*, 407 U.S. 67 (1972) (repossession without prior notice and hearing held unconstitutional); *Hernandez v. European Auto Collision, Inc.*, 487 F.2d 378 (2d Cir. 1973) (bailee's lien held unconstitutional); *Beaudreau v. Superior*

*Postjudgment: Federal Law*

In 1968, postjudgment garnishment procedure became the subject of federal legislative action when Congress enacted Title III of the Federal Consumer Credit Protection Act.<sup>22</sup> Reflective of the congressional concern behind its enactment, Title III excluded from garnishment either 75% of a person's disposable earnings or thirty times the federal minimum hourly wage—whichever afforded the debtor greater protection.<sup>23</sup> With

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Court, 14 Cal. 3d 448, 535 P.2d 713, 121 Cal. Rptr. 904 (1975) (pre-trial posting of costs under California Government Code §§ 947 and 951 held unconstitutional); *Adams v. Department of Motor Vehicles*, 11 Cal. 3d 146, 520 P.2d 961, 113 Cal. Rptr. 145 (1974) (garagemen's liens permitting foreclosure and sale on a customer's car without a prior hearing held unconstitutional); *Randone v. Appellate Dep't*, 5 Cal. 3d 536, 488 P.2d 13, 96 Cal. Rptr. 709 (1971), *cert. denied*, 407 U.S. 924 (1972) (former California Civil Procedure Code § 537(1), authorizing attachment without prior hearing on an express or implied contract for the payment of money, held unconstitutional); *Blair v. Pitchess*, 5 Cal. 3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971) (claim and delivery statutes held unconstitutional); *Damazo v. MacIntyre*, 26 Cal. App. 3d 18, 102 Cal. Rptr. 609 (1972) (former California Civil Procedure Code § 537(4) authorizing attachment in unlawful detainer actions for unpaid rent held unconstitutional, but former § 537(3), authorizing attachment in tort actions against nonresidents found constitutional); *People v. Allstate Leasing Co.*, 24 Cal. App. 3d 973, 101 Cal. Rptr. 470 (1972) (former California Civil Procedure Code § 537(5) held unconstitutional to the extent it permitted the state to use attachment in a collection action on a statutory obligation penalty); *Gray v. Whitmore*, 14 Cal. App. 3d 784, 92 Cal. Rptr. 505, *vacated*, 17 Cal. App. 3d 1, 94 Cal. Rptr. 904 (1971) (landlord's lien held unconstitutional); *National Gen. Corp. v. Dutch Inns of America, Inc.*, 15 Cal. App. 3d 490, 93 Cal. Rptr. 343 (1971) (former California Civil Procedure Code § 537(2) authorizing attachment in contract actions held unconstitutional).

22. 15 U.S.C. §§ 1671-1677 (1970). Congress claimed authority under both the commerce clause and bankruptcy clause of the Constitution to enact Title III. U.S. CONST. art. I, § 8; *see Hodgson v. Hamilton Mun. Court*, 349 F. Supp. 1125 (D. Ohio 1972) (provisions of Title III restricting garnishment by states held constitutional). For a discussion of the constitutionality of Title III see Note, *Federal Restrictions of Wage Garnishment: Title III of the Consumer Credit Protection Act*, 44 IND. L.J. 267, 269-76 (1969)[hereinafter cited as Note, *Federal Restrictions*].

23. 15 U.S.C. § 1673(a) (1970), provides in relevant part:

(a) [T]he maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

- (1) 25 per centum of his disposable earnings for that week, or
- (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a) (1) of Title 29 in effect at the time the earnings are payable, whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

15 U.S.C. § 1672 (1970) provides definitions for § 1673:



the current minimum wage of \$2.30 per hour,<sup>24</sup> if a worker earns \$69 or less per week he is not subject to garnishment in any amount. If earnings are between \$69 and \$92, a creditor can only take the amount by which a debtor's earnings exceed \$69. If disposable earnings are above \$92, the "25 percent rule" is applicable.<sup>25</sup> The definitions of "earnings," "disposable earnings" and "garnishment" have been the subject of much litigation. For example, "garnishment," as defined in section 1672(c) of Title III does not include wage assignments which were brought about by negotiation between the parties and subsequently implemented without judicial intervention.<sup>26</sup> "Earnings" and "disposable earnings" are confined to periodic payments of compensation and do not pertain to every asset that is in some way traceable to such compensation. In determining whether money due a person constitutes "earnings" under section 1672(a) of Title III, the courts are not concerned with conclusory labels such as wages, salary or commission; the sole criterion for exemption is that the money subject to garnishment represent compensation for personal services in a strict sense.<sup>27</sup> "Disposable earnings," according to section

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For the purposes of this subchapter:

(a) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(c) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

24. 29 U.S.C.A. § 206(a) (West Supp. 1975).

25. 29 C.F.R. § 870.10(b) (1971).

26. *Western v. Hodgson*, 494 F.2d 379 (4th Cir. 1974); [1975] 1 LAB. L. REP. (CCH) Wage and Hour Cas. ¶ 22,501.65.

27. For example, one state court has held that a lessor of transportation equipment, who was not paid wages, salary or commission but has received a fixed percentage of revenue derived from shipments, and whose employment status was one of independent contractor rather than employee, did not receive any compensation for personal services and thus had no "earnings" under § 1672(a). Therefore, the entire amount due to the lessor was subject to garnishment rather than only 25% as provided under § 1673(a)(1). *Gerry Elson Agency, Inc. v. Muck*, 509 S.W.2d 750 (Mo. Ct. App. 1974). Benefits and pensions paid the debtor and his wife under programs of the Veterans Administration, Social Security Administration and county welfare department and deposited in debtor's checking account have been held not "earnings" and not subject to garnishment restrictions. *Phillips v. Bartolomie*, 46 Cal. App. 3d 346, 121 Cal. Rptr. 56 (1975). A bankruptcy trustee has been held to have the right to treat

1672(b), are earnings remaining after the deduction of any amounts required by law to be withheld. Federal income tax and social security payments are deductible because they are specifically required by federal law,<sup>28</sup> but union dues or repayments of credit union loans are not deductions required by either federal or state law to be withheld and therefore are part of disposable earnings.<sup>29</sup> Similarly, amounts withheld for unemployment compensation and workmen's compensation insurance pursuant to state law are also allowable deductions.<sup>30</sup> Since the Secretary of Labor is given the power of enforcing Title III in section 1676, wage and hour opinion letters also provide guidance in interpretation. Such administrative constructions are entitled to great weight by the courts.<sup>31</sup>

Section 1673(b) of Title III specifically excludes from garnishment restrictions any court-ordered support payments, any court-ordered bankruptcy under Chapter XIII of the Bankruptcy Act and any debt due for any state or federal tax. However, if child support payments, for example, should amount to more than 25% of an individual's wages per week, this would preclude any additional garnishment in the same week.<sup>32</sup>

Title III forbids an employer from discharging an employee because of wage garnishments resulting from "any one indebtedness."<sup>33</sup> However, if a second garnishment proceeding results

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an entire tax refund to a bankrupt wage earner as property of the bankrupt's estate without regard to garnishment restrictions since a tax refund is not the equivalent of "earnings." *Kokoszka v. Belford*, 417 U.S. 642 (1974), *aff'g* 479 F.2d 990 (2d Cir. 1973).

28. [1975] 1 LAB. L. REP. (CCH) Wage and Hour Cas. ¶ 22,501.156.

29. *Id.* ¶ 22,501.15.

30. *Id.* ¶ 22,501.155.

31. *Brennan v. Kroger Co.*, 513 F.2d 961 (7th Cir. 1975); *In re Cedor*, 337 F. Supp. 1103 (N.D. Cal. 1972). The following are illustrative of such administrative rulings on what constitutes "earnings" under § 1672(a): (1) tips which pass through the hands of the employer-garnishee, [1975] 1 LAB. L. REP. (CCH) Wage and Hour Cas. ¶ 22,501.158; (2) lump sum payments to artists and writers after a determination is made of the number of workweeks spent on the product, *id.* ¶ 22,501.159; (3) sick pay, *id.* ¶ 22,501.161; (4) earnings deposited in a debtor's bank account as long as they can be identified as such under the circumstances of the particular case, *id.* ¶ 22,501.175.

32. [1975] 1 LAB. L. REP. (CCH) Wage and Hour Cas. ¶ 22,501.201.

33. 15 U.S.C. § 1674(a) (1970). The Wage-Hour Administrator has interpreted the term "one indebtedness" to mean a single debt regardless of the number of levies made or the number of proceedings brought for its collection. [1975] 1 LAB. L. REP. (CCH) Wage and Hour Cas. ¶ 22,501.60. In the opinion of the Administrator, the protection of Title III with respect to discharge for one indebtedness is renewed with each employment, since the new employer would not yet have been a garnishee and would have suffered no inconvenience by the previous garnishment. Discharge for a second garnishment, after a considerable length of time has elapsed, may be unlawful

from a separate debt, the employee can be legally discharged.

A state may be exempt from federal regulation if it enacts laws of its own "substantially similar" to Title III.<sup>34</sup> Even if total exemption from federal regulation is not granted to a state, federal law will not supersede any state garnishment law which offers more protection to the debtor.<sup>35</sup> The legislative purpose of Title III was to set minimum standards with regard to garnishment but not necessarily to preempt state authority in the area.<sup>36</sup>

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since the lapse of time could make the first garnishment no longer a material consideration. *Id.* ¶ 22,501.60.

34. 15 U.S.C. § 1675 (1970). Under § 1675, the Secretary of Labor may exempt a state from federal garnishment restrictions if it is determined that the laws of that state are "substantially similar" to those provided by § 1673(a). Laws are considered substantially similar if they cover "every case of garnishment covered by the Act [Title III], and if these laws provide the same or greater protection to individuals." 29 C.F.R. § 870.51(a) (1972). It is noteworthy that ten states have applied for exemption, but only Kentucky and Virginia have qualified. *Dept's of Labor & Health, Education & Welfare Appropriations for 1973: Hearings Before a Subcomm. of the House Comm. on Appropriations*, 92d Cong., 2d Sess. 385 (1972) (Title III restrictions on garnishment; states' compliance with garnishment regulations).

35. 15 U.S.C. § 1677 (1970).

36. Title III itself states its purpose as threefold: (1) to discourage predatory extensions of credit relying on garnishment as a remedy; (2) to discourage discharge from employment because of garnishment; and (3) to promote uniformity of bankruptcy laws. 15 U.S.C. § 1671(a)(1)-(3) (1970). See *Gerry Elson Agency, Inc. v. Muck*, 509 S.W.2d 750 (Mo. Ct. App. 1974).

With respect to the minimum standard concept, Senator Proxmire's remarks are illustrative of the legislative intent behind Title III: "In effect the Federal Government has set minimum standards. The provision has not automatically preempted the State's authority to legislate on the subject." 114 CONG. REC. 14488 (1968).

In contrast to the minimum standard concept is the aim of the Uniform Consumer Credit Code (UCCC) which would wholly supplant state garnishment laws once enacted by that state. The UCCC provides for wage garnishments to be limited to the lesser of the amount exceeding forty times the federal minimum wage or 75% of wages for each workweek. UCCC § 5.105(2)(b). These restrictions apply only when the garnishment is used to coerce payment of a judgment arising out of a consumer credit sale, consumer loan or consumer lease. See generally Curran, *Administration and Enforcement Under the Uniform Consumer Credit Code*, 33 L. & CONTEMP. PROB. 737 (1968); Fritz, *Would the Uniform Consumer Credit Code Help the Consumer?*, 25 BUS. LAW 511 (1970); Johnson, *Uniform Code for Consumer Credit*, HARV. BUS. REV., July-Aug., 1968, at 119; Note, *Administration of the Uniform Consumer Credit Code*, 8 IND. L. REV. 828 (1975); Note, *Garnishment Under the Consumer Credit Protection Act and the Uniform Consumer Credit Code*, 38 U. CIN. L. REV. 338 (1969). The UCCC also restricts deficiency judgements and forbids discharge from employment no matter how many garnishments or debts are involved. UCCC §§ 5.101-.106.

The UCCC has been adopted by Colorado (1971), Idaho (1971), Indiana (1971), Iowa (1974), Kansas (1974), Maine (1975), Oklahoma (1969), Utah (1969) and Wyoming (1971) (effective dates). However, some states, such as Indiana, Colorado, Kansas and Oklahoma have changed the UCCC alternative minimum exemptions to 75% or thirty times the federal minimum hourly wage.

Title III does not provide for any criminal penalties except against the employer for his unlawful discharge of an employee.<sup>37</sup> There is no criminal penalty imposed for garnishment in excess of the federal restrictions, but there is some authority to suggest that an implied private cause of action may lie to recover damages caused by illegal discharge or excessive garnishment. In *Stewart v. Travelers Corp.*, a 1974 Ninth Circuit decision,<sup>38</sup> an employee discharged due to garnishment of his wages for one indebtedness was held to have an implied private civil remedy since he was within the class that the statute was designed to protect and his discharge was the type of harm which the statute was designed to prevent. The court held that the private civil action could be implied despite the fact that alternative remedies existed under federal statute or the fact that enforcement was specifically vested in the Secretary of Labor. In granting the plaintiff reinstatement to his job, recovery of back pay, punitive damages and attorney's fees for being illegally discharged, the *Stewart* court found that nothing in Title III evidenced a clear congressional intent against private actions for civil remedies and that the criminal sanctions and administrative enforcement expressly authorized in Title III did not adequately protect the statutory interest of the discharged employee. Several district courts,<sup>39</sup> however, have refused to imply a private right of action, leaving enforcement of Title III exclusively with the wage and hour division of the United States Department of Labor.<sup>40</sup>

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37. 15 U.S.C. § 1674(b) (1970). The penalty for violation of § 1674(a) is a \$1,000 fine or imprisonment for up to one year.

38. 503 F.2d 108 (9th Cir. 1974).

39. *Western v. Hodgson*, 359 F. Supp. 194 (S.D.W.Va. 1973), *aff'd*, 494 F.2d 379 (4th Cir. 1974); *Simpson v. Sperry Rand Corp.*, 350 F. Supp. 1057 (W.D. La. 1972), *vacated*, 488 F.2d 450 (5th Cir. 1973); *Oldham v. Oldham*, 337 F. Supp. 1039 (N.D. Iowa 1972); *Sutton v. Hodgson*, 71 Lab. Cas. 32,886 (D. Ohio 1972); *Higgins v. Wilkerson*, 63 Lab. Cas. 32,379 (D. Kan. 1970); *Hooter v. Wilson*, 273 So. 2d 516 (La. 1973). *But see Nunn v. City of Paducah*, 367 F. Supp. 957 (W.D. Ky. 1973).

40. Enforcement of Title III is left exclusively to the Secretary of Labor under § 1676; but the Department of Labor is not a party to any state garnishment proceedings and is, therefore, not in a position to discover violations. As a result, enforcement of Title III is almost wholly dependent upon the awareness and knowledge of the employee it attempts to protect. *See, e.g., Comment, California Garnishment, supra* note 5, at 73-76; *Note, Federal Restrictions, supra* note 22, at 279-82; *Note, The Implication of a Private Right of Action Under Title III of the Consumer Credit Protection Act*, 47 S. CAL. L. REV. 383 (1974).

Further, the Secretary of Labor's enforcement of Title III appears to be discretionary. Section 1676 of Title III provides that the Secretary of Labor *shall* enforce the Act through the wage and hour division. The wage and hour division is regulated by

*Postjudgment: California Law*

The 1970 and 1972 amendments to California's existing garnishment laws produced no sweeping reforms.<sup>41</sup> By passage of Title III, the previous California minimum exemption of 50% of a debtor's earnings was forced upward to meet the federal minimum requirement of 75%.<sup>42</sup> The state protective requirement that a creditor notify an employee within eight days of garnishment of his wages was rewritten to require that notice of post judgment execution of wages be sent to the debtor on the same day the garnishment is authorized.<sup>43</sup> The notice must inform the debtor that he may be entitled to an exemption from execution, may seek counsel, and that he has ten days to deliver an affidavit to the levying officer claiming such an exemption.<sup>44</sup> California law retained a 100% exemption if the debtor could prove that all of his earnings<sup>45</sup> were necessary for the support of his family residing in the state.<sup>46</sup>

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the Fair Labor Standards Act, which provides that the Administrator *may* investigate and bring suit. 29 U.S.C. § 211(a) (1970). The existence of this discretion has been confirmed by at least one court. *Powell v. Washington Post Co.*, 267 F.2d 651 (D.C. Cir. 1959). *But see Simpson v. Sperry Rand Corp.*, 350 F. Supp. 1057 (W.D. La. 1972) (emphasizing language that "Secretary shall enforce" provisions of Title III).

41. See note 20 *supra*.

42. CAL. CIV. PROC. CODE § 690.6(a) (West Supp. 1977) (emphasis added) provides in relevant part:

(a) One-half or such greater portion as is allowed by statute of the United States, of the earnings of the debtor received for his or her personal services rendered at any time within 30 days next proceeding the date of a withholding by the employer under Section 682.3, shall be exempt from execution without filing a claim for exemption as provided in Section 690.50.

Prior to January 1, 1977, this same text was in § 690.6(b).

43. *Id.* § 682.1.

44. *Id.*

45. Only earnings incurred thirty days preceding the levy are eligible for exemption. *Id.* § 690.6(a), (b); *LeFont v. Rankin*, 167 Cal. App. 2d 433, 334 P.2d 608 (1959).

46. CAL. CIV. PROC. CODE § 690.6(b) (West Supp. 1977) (emphasis added) provides:

(b) All earnings of the debtor received for his or her personal services rendered at any time within 30 days next preceding the date of a withholding by the employer under Section 682.3, *if necessary for the use of the debtor's family* residing in this state and supported in whole or in part by the debtor, unless the debts are:

(1) Incurred by the debtor, his or her spouse, or his or her family for the *common necessities of life*.

(2) Incurred for personal services rendered by any employee or former employee of the debtor.

Prior to January 1, 1977, this text was § 690.6(c).

The determination of what is "necessary for the use of a debtor's family" under §

The right to the 100% exemption, however, remained subject to two exceptions. First, if the debt was incurred for personal services rendered to the debtor by an employee or former employee, the 100% exemption is lost.<sup>47</sup> Second, if the debt was incurred by the debtor, his spouse, or his family for the "common necessities of life," the 100% exemption is not allowed *even though* the debtor could show that all his earnings were needed to support his family.<sup>48</sup> The avowed purpose of this exception was to guarantee to those creditors extending credit for "common necessities" that at least some part of a debtor's salary above the minimum would be subject to garnishment and to encourage such creditors to be more liberal in giving credit for such necessary items. Determining what is a common necessary does not involve subjective considerations—it is objectively based upon what is necessary to sustain life for anyone.<sup>49</sup> The phrase "common necessities of life" approaches

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690.6(b) involves consideration of all the circumstances of that particular debtor, including his station in life and his particular type of employment. Among the items which have been held to be expenses which qualify as necessary for the use of the debtor's family are the following: small sums for music lessons and recreation, insurance for wife and children, social security and unemployment reserves withheld by an employer, *Sanker v. Humborg*, 48 Cal. App. 2d 295, 119 P.2d 621 (1941); money spent on behalf of daughter attending college, *Diamond v. Brent*, 157 Cal. App. 2d Supp. 857, 320 P.2d 621 (1957); medical care, *Simoneau v. Pacific Elec. Ry.*, 159 Cal. 494, 115 P. 320 (1911); Medical Fin. Ass'n v. Short, 36 Cal. App. 2d Supp. 745, 173 P. 176 (1939); dental services, *Smith v. Bentson*, 127 Cal. App. Supp. 789, 15 P.2d 910 (1939); a watch, *In re Estate of Millington*, 63 Cal. App. 498, 218 P. 1022 (1923); a fur coat, *Bay Dist. Claim Serv. v. Jones*, 136 Cal. App. Supp. 789, 24 P.2d 977 (1933); domestic services, *Winsom v. McCarthy*, 48 Cal. App. 697, 192 P. 337 (1920); services of a nurse, *Davis v. Fyfe*, 107 Cal. App. 281, 290 P. 468 (1930); *Heaton v. Justice's Court*, 19 Cal. App. 2d 118, 64 P.2d 1004 (1937); legal services to an incompetent, *Stone v. Conkle*, 31 Cal. App. 2d 348, 88 P.2d 197 (1939).

47. CAL. CIV. PROC. CODE § 690.6(b)(2) (West Supp. 1977) (prior to January 1, 1977, this section was 690.6(c)(2)). See note 46 *supra*. This exemption has an extremely limited effect, since few debtor-garnishees are employers.

48. CAL. CIV. PROC. CODE § 690.6(b)(1) (West Supp. 1977) (prior to January 1, 1977, this was § 690.6(c)(1)). See note 46 *supra*.

Common necessities has been held to mean only those items, which, "in the hands of anyone," are necessary to sustain life, such as food, heat and shelter. *Los Angeles Fin. Co. v. Flores*, 110 Cal. App. 2d Supp. 850, 856, 243 P.2d 139, 143-44 (1952); see *Ratzlaff v. Portillo*, 14 Cal. App. 3d 1013, 92 Cal. Rptr. 722 (1971) (automobile, although great convenience, not necessary in view of availability of public transportation, home delivery service and neighborhood shopping centers); *Carpenter v. Trujillo*, 275 Cal. App. 2d 1021, 79 Cal. Rptr. 725 (1969) (medical expenses held common necessities; encyclopedias not); *Lentfoehr v. Lentfoehr*, 134 Cal. App. 2d Supp. 905, 286 P.2d 1019 (1955) (debt to former wife for attorney's fees and court costs in divorce action not one for common necessities).

49. *Los Angeles Fin. Co. v. Flores*, 110 Cal. App. 2d Supp. 850, 856, 243 P.2d 139, 143-44 (1952).

the strict common law definition of the term necessities which included food, drink, clothing, housing, washing and medical care only.<sup>50</sup> Thus, two separate steps are involved before a 100% exemption can be claimed. First, the debtor must show that all of his earnings are necessary for the support of his family. If this is established, then the debtor must show that the debt involved was not for the common necessities of life. If both requirements are met, only then is the debtor entitled to a 100% exemption. The favored policy of the courts is to construe exemptions (what is necessary for support of the debtor's family) liberally and exceptions (common necessities of life) strictly.<sup>51</sup>

The lengthy procedure a debtor must follow to claim a 100% exemption was not substantially changed by a 1974 amendment and still remains cumbersome and time consuming.<sup>52</sup> In 1972, the system of costly multiple levies to satisfy a judgment was replaced with a provision that allowed a levy of execution to remain in effect for ninety days.<sup>53</sup>

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50. *White v. Gobey*, 130 Cal. App. Supp. 789, 19 P.2d 876 (1933); *Sumner v. Mohn*, 47 Cal. App. 142, 190 P. 368 (1920); *Evans v. Noonan*, 20 Cal. App. 288, 128 P. 794 (1912). One commentator suggests that the reason there are so few reported decisions on the meaning of common necessities is that few debtors can afford to litigate this issue. Brunn, *supra* note 20. See, e.g., Seid, *Necessaries—Common or Otherwise*, 14 HASTINGS L.J. 28 (1962).

51. *Perfection Paint Prod. v. Johnson*, 164 Cal. App. 2d 739, 330 P.2d 829 (1958); 5 B. WITKIN, CALIFORNIA PROCEDURE § 64, at 3440 (2d ed. 1971).

52. CAL. CIV. PROC. CODE § 690.50 (West Supp. 1977). Section 690.50 was amended in 1974 to give the debtor twenty days in the case of real property described in § 690.235 and ten days in the case of all other property to deliver an affidavit to the levying officer claiming an exemption. The levying officer will send a copy of the claim to the creditor who then has five days to file a counteraffidavit (ten days in the case of real property described in § 690.235). *Id.* § 690.50(c). If there is no counteraffidavit filed by the creditor, the property must be released by the levying officer. *Id.* § 690.50(d). If a counteraffidavit is filed, either party may make a motion within five days for a hearing. *Id.* § 690.50(e). After the motion is made, a hearing must be held within fifteen days unless continued for good cause. *Id.* At the hearing the debtor claiming the exemption has the burden of proof. If the claim to the exemption is granted, the debtor is entitled to release of his earnings within three days. *Id.* § 690.50(j).

53. *Id.* § 682.3(4).

Prior to the enactment of § 682.3(4), a separate writ of execution had to be served for each wage withholding and the costs became prohibitive. See, e.g., Recommendation Relating to Attachment, Garnishment, and Exemptions from Execution: Employee's Earnings Protection Law, published in 10 CALIFORNIA LAW REVISION COMM'N, REPORTS, RECOMMENDATIONS & STUDIES 701, 710 n.6 (1971) [hereinafter cited as LAW REVISION COMM'N, Garnishment Recommendation]. Section 682.3(4) provides for the writ to remain effective for ninety days. Under this section the judgment debtor can claim an exemption of all his earnings before the ninety-day period or at anytime during the ninety-day period upon a showing of changed circumstances, even if the

To assess what effect Title III and California's garnishment laws have had and the extent to which those laws tear into our social fabric for the economic benefit they produce, it is necessary to know who the default-debtors being garnished are and what happens to them as the result of garnishment.

#### DEFAULT-DEBTORS: WHO AND WHY

The vast majority of Americans pay back their debts—in fact, defaults constitute only two percent of all consumer credit transactions.<sup>54</sup> However, because of the phenomenal growth of consumer credit, this seemingly small percentage involves billions of dollars.<sup>55</sup> A 1967 study by David Caplovitz<sup>56</sup> revealed that of 1,331 default-debtors appearing on court records from New York, Chicago, Detroit and Philadelphia, the typical default-debtor was likely to be marginally poor,<sup>57</sup> undereducated,<sup>58</sup> young,<sup>59</sup> a member of a minority,<sup>60</sup> and either employed in a blue-collar occupation or unemployed.<sup>61</sup> Of those debtors comprising the study group, Caplovitz found that most of the

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debtor was denied such an exemption prior to the start of the period. Further, the judgment creditor who is barred by a continuing exemption can terminate the debtor's exempt status by showing "changed circumstances." See Comment, *Wage Garnishment: Legislative Review*, 4 PAC. L.J. 293, 294 (1973). The debtor can be charged with a marshal's fee of \$8.50 per levy for serving the writ, CAL. GOV'T CODE § 26734 (West Supp. 1977), and a clerk's fee of \$4.00 for issuing the writ, *id.* § 26828 (West 1968).

54. CAPLOVITZ, *supra* note 15, at 291.

55. In 1975, consumer credit was estimated at \$186.1 billion; a 2% rate of default would leave \$3.72 billion unpaid. See note 13 *supra*.

56. CAPLOVITZ, *supra* note 15.

57. *Id.* at 15. Fifty-four percent of the default-debtors had annual incomes between \$4,000 and \$8,000.

In a study conducted by the National Opinion Research Center in 1967, 43% of all credit users were found to have annual incomes between \$4,000 and \$8,000.

58. Thirty-nine percent of the default-debtors had a high school education, as opposed to 52% of the general population, and 11% had some college education. *Id.* at 18.

59. Forty-five percent were found to be under thirty-five years of age and non-farm family heads. Credit users as a group were generally younger—38% were under thirty-five while only 25% of the general population was under thirty-five. Thirty percent of the debtors were between the ages of thirty-five and forty-four. *Id.* at 19.

60. The black population in the four cities studied (in New York, the study included both blacks and Puerto Ricans) comprised from 18-34% of the total city population, but 65% of the default-debtors were black. Whites comprised 64-72% of the total population but constituted 28% of the default-debtors. Whites constituted 85% of credit users as a group and blacks 15%. *Id.* at 20.

61. Most of the debtors were from the lower levels of blue-collar occupations with incomes below what is considered adequate in major urban areas. Twenty-five percent of the debtors were unemployed at the time of default. *Id.* at 17-18.



debts were incurred for durable goods<sup>62</sup> and that seventy percent were incurred under conditional sale contracts.<sup>63</sup> A Los Angeles study further evidenced that most of the sales were made at stores catering to consumers with below-average incomes. Forty percent of the debtors in that study reported that, at the time credit was extended, they were not even asked if they had any other outstanding debts.<sup>64</sup>

Myths as to why people are default-debtors persist—the general public believes that all people who fail to pay their debts are “deadbeats,” simply trying to evade the law, to get something for nothing. Caplovitz found that only one percent met this stereotype and were guilty of bad faith.<sup>65</sup> He labelled five percent as “irresponsible” for their failure to pay because of bad faith, forgetfulness, lapse of payment while out of town, or refusal to pay because their merchandise was stolen or destroyed.<sup>66</sup> The primary reason why debts were not repaid was unexpected loss of income, while the second most popular reason was voluntary overextension.<sup>67</sup> The former applied to 43% of Caplovitz’ subjects and the latter to 25%. The real cause of trouble in the overextended group usually was inability to keep up with payments because of some unexpected crisis. Fourteen percent cited fraud and deception as the primary reason for their default, while 35% implicated the creditor.<sup>68</sup> Of those who cited loss of income as the primary reason for their default, more than 25% lost their jobs, were laid off or forced on shorter work weeks, while another 16% became ill.<sup>69</sup> Because of the above, Caplovitz concluded that two out of every five debtors defaulted because of unexpected hardships imposed by unem-

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62. CAPLOVITZ, *supra* note 15, at 30. Purchases were broken down into the following percentages: 26% automobiles, 20% furniture, 13% appliances, 11% entertainment appliances (including televisions, radios and stereos), 16% soft goods, and 10% personal accessories (including jewelry, watches, wigs, etc.). *Id.*

63. *Id.* at 28-29.

64. WESTERN CENTER ON LAW & POVERTY, WAGE GARNISHMENT—IMPACT AND EXTENT IN LOS ANGELES COUNTY 3 (1968) [hereinafter cited as LOS ANGELES STUDY]. An FTC report on installment credit and retail sales practices occurring in the District of Columbia found that, 70% of the retailers studied said they used no credit references or, if used, then references only with other low-income retailers. *Id.* at 11, citing FTC, ECONOMIC REPORT ON INSTALLMENT CREDIT AND RETAIL SALES PRACTICES OF DISTRICT OF COLUMBIA RETAILERS 7 (1968).

65. CAPLOVITZ, *supra* note 15, at 59.

66. *Id.*

67. *Id.* at 54.

68. *Id.*

69. *Id.* at 57.

ployment and illness.<sup>70</sup>

The average default-debtor, therefore, is not someone who has calculated all the angles and is trying to "beat" the credit system. He is a person who has not considered all the consequences of buying on credit and has erroneously assumed that his earning ability will remain unchanged in the future. When the unexpected does occur and the wage earner finds himself laid off, sick or out of work, he suddenly finds himself unable to meet his installment commitments. It is primarily the poor and undereducated consumer whose only answer to an unexpected financial reversal is default.

#### GARNISHMENT: AN INEFFICIENT COLLECTION DEVICE

Not only does garnishment prey upon members of society who are least likely to be able to withstand its personal and financial consequences, but it is also an inefficient and indiscriminate collection remedy. Garnishment procedure exacts payment by yielding an axe when the nature of the problem demands a surgeon's scalpel.

The garnishment procedure is time-consuming<sup>71</sup> and expensive. An employer must decide what amount of his employee's salary can be classified as "disposable earnings"<sup>72</sup> and then use the appropriate formula to decide how much of that is exempt. The Los Angeles study estimated that the procedure cost employers an average of \$19.36 per garnishment—about \$1.8 million annually in Los Angeles alone.<sup>73</sup> Added to this cost are the state costs in serving the writs<sup>74</sup> and the court costs in adjudicating the procedure. It is estimated that filing fees,

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70. *Id.* at 59.

71. Caplovitz found that, although 68% of the debt-causing transactions took place within two years of his interviews (the interviews occurred within four to eight months after cases were filed in court docket books), some 31% of the cases had begun three or more years before. *Id.* at 34-35.

72. 15 U.S.C. § 1672(b) (1970). See notes 28-30 and accompanying text *supra*.

73. LOS ANGELES STUDY, *supra* note 64, at 5. Caplovitz estimated the cost to be higher—\$22.24 per garnishment. CAPLOVITZ, *supra* note 15, at 237 n.10. Illustrative of the high costs involved in garnishment proceedings is Boeing Corporation's (in Seattle, Washington) estimate that it spent over \$200,000 per year and served 500 writs each month. See Comment, *Wage Garnishment in Washington—An Empirical Study*, 43 WASH. L. REV. 743, 755-56 (1968).

In another study, the Cook County Credit Bureau in Chicago surveyed 1,100 employers in 1964 and found that processing a single garnishment costs a company from \$15 to \$35 and that the total annual cost of such garnishments to the surveyed employers was \$12 million. *Hearings on H.R. 11601*, *supra* note 16, at 766.

74. See note 53 *supra*.

court costs, added interest and attorney's fees comprise 9% of a garnishee's debt liabilities over \$1,000 and 31% for liabilities under \$200.<sup>75</sup> Furthermore, a Chicago survey, revealed that the average recovery through garnishment was a mere \$145.42 while the average debt outstanding was \$417.29.<sup>76</sup> It appears that garnishment is not only an inefficient collection device, but its procedural costs soar at a rate which is inversely proportional to the amount of the debt.

Garnishment is most often defended on the grounds that it is a necessary concomitant to the extension and growth of credit and that it is the only effective means by which a creditor can collect debts. These defenses are illusory at best. The fact that complete or very liberal wage exemptions do not affect the extension of credit in any significant degree has been proven convincingly.<sup>77</sup> Caplovitz' study found that the percentage of debtors repaying their debts did not vary significantly whether or not garnishment existed as a collection remedy.<sup>78</sup> In the cities allowing garnishment, Caplovitz found that 63% of the non-garnisheed default-debtors either paid in full or resumed payments.<sup>79</sup> In Philadelphia, where garnishment was not allowed, 69% of the default-debtors paid in full or resumed payments.<sup>80</sup> As would be expected, in New York, Chicago and Detroit, cities allowing garnishment, those garnisheed were much more likely to repay than those who were not.<sup>81</sup> However, of those who were subject to garnishment but instead elected

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75. See LOS ANGELES STUDY, *supra* note 64, at 4.

76. Note, *Wage Garnishment: Remedy or Revenge?*, 5 LOY. CHI. L.J. 140, 152 (1974) [hereinafter cited as Note, *Wage Garnishment*].

77. See, e.g., Brunn, *supra* note 20, at 1240-43; Note, *Wage Garnishment*, *supra* note 76, at 152-55. As evidence that the extension of credit was not reduced by the enactment of Title III, note the following excerpt:

Between 1966 and 1970 consumer credit grew from 96.2 billion dollars to 127.2 billion dollars, a growth of 30.9 billion, a rate of 7.7 billion dollars per year. After enactment of the CCPA [Consumer Credit Protection Act] Title III, consumer credit grew at an unprecedented pace. By 1972, consumer credit had grown to a level of 157.6 billion dollars for a growth rate of 15.2 billion dollars per year. In other words, after the enactment of the more restrictive garnishment laws, the expansion of credit increased 97 percent.

*Id.* at 154, citing FED. RES. BULL. A-54 (1973).

78. CAPLOVITZ, *supra* note 15, at 225-55.

79. *Id.* at 250. The cities were New York, Chicago and Detroit.

80. *Id.* at 251.

81. *Id.* table 12.11. Of those who were garnisheed and accepted their debt as legitimate, 82% repaid while only 58% of the same group, but not garnisheed, repaid. Of those who felt unsatisfied or cheated, 63% of those garnisheed repaid, while only 38% of the non-garnisheed repaid. *Id.*

to settle payment of their debt, only 38% were satisfied that the settlement was fair, whereas 62% of those not garnisheed felt their settlement was fair.<sup>82</sup> Caplovitz found that garnishment was indeed a powerful remedy once it was held over the head of the debtor; so powerful, in fact, that many debtors accepted a settlement they felt was unfair rather than run the gamut of the garnishment procedure. The Philadelphia study disclosed the apparent anomaly that garnishment was often unnecessary since many of these same debtors (69%) would have repaid voluntarily, especially if the debt was considered legitimately incurred.<sup>83</sup>

While it would seem that there should be no reason why one default-debtor should be more likely to be garnisheed than another, the Caplovitz study illustrated that lower-income blue-collar workers as opposed to white-collar workers; that those workers earning under \$8,000 per year as opposed to those earning more; that blacks and Puerto Ricans as opposed to whites; and that employees in the private sector as opposed to those in the public sector were significantly more likely to be garnisheed than their fellow default-debtors.<sup>84</sup> A Los Angeles study found that installment debtors with annual incomes under \$5,000 were more than three-and-one-half times as likely to be sued for their debts as those with incomes above that amount.<sup>85</sup>

Stripped of wage garnishment, creditors would certainly not throw their hands up in helplessness. Over the years, an array of remedies has inured to the creditor's advantage, including attachment and execution, skip tracing, repossession, liens and levies against automobiles, bank accounts and homes, and judicial examination of debtors.<sup>86</sup>

One must question what kind of creditor would be most

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82. *Id.* at 245.

83. *Id.*

84. *Id.* at 233-43. Caplovitz' research was indeed revealing; for example, 52% of low-income blue-collar debtors were garnisheed versus 37% of the higher-income white-collar workers. In addition, 50% of black debtors were garnisheed as compared to only 36% of white debtors. Even when the type of plaintiff was held constant, blacks were garnisheed more frequently. Forty-eight percent of those privately employed were garnisheed, while 32% in the public sector were. *Id.*

85. LOS ANGELES STUDY, *supra* note 64, at 9. The study also found that 77% of families making less than \$3,000 annually at that time did not have installment debts since they could not get credit in the first place. *Id.*

86. See, e.g., Riesenfeld, *Collection of Money Judgments in American Law—A Historical Inventory and a Prospectus*, 42 IOWA L. REV. 155, 181 (1957); note 9 *supra*.

hurt by the abolition of wage garnishment. The most frequent "creditor" using wage garnishment to satisfy a judgment is the collection agency—the Los Angeles study revealed that 75% of the garnishments were brought by such agencies.<sup>87</sup> Caplovitz found, in addition, that 60% of the default-debtors initially subjected to a great deal of harassment were garnisheed<sup>88</sup> and that 52% of those who felt highly deceived at the outset were later garnisheed.<sup>89</sup> This led Caplovitz to classify the creditors into two groups—one which used "high pressure tactics and strong measures to collect their debts" versus one which was "more ethical in their business dealings and less prone to resort to harsh collection measures."<sup>90</sup> Garnishment, he found, was more likely to be relied upon by the less ethical creditor who extended credit primarily in reliance upon the garnishment remedy rather than upon an adequate credit check. Caplovitz concluded that the law seemed to place a powerful collection weapon in the hands of high-pressure creditors who least deserve it.<sup>91</sup>

#### SOCIAL COSTS OF WAGE GARNISHMENT

Prior to enactment of Title III in 1968 and to the amendments to the California garnishment statutes in 1970, commentators warned of the harsh effects of wage garnishment.<sup>92</sup> One cautiously predicted Title III would solve many of the economic ills produced by garnishment.<sup>93</sup> Others advocated further major reforms<sup>94</sup> and some called for total abolition of wage garnish-

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87. See LOS ANGELES STUDY, *supra* note 64, at 4.

88. CAPLOVITZ, *supra* note 15, at 236.

89. Only 38% of the default-debtors who experienced little or no harassment were garnisheed. Where there was little or no deception at the outset, 43% were eventually garnisheed. *Id.*

90. *Id.*

91. *Id.*

92. See, e.g., CAPLOVITZ, *supra* note 15; LOS ANGELES STUDY, *supra* note 64; Brunn, *supra* note 20; Mussman & Riesenfeld, *Garnishment and Bankruptcy*, 27 MINN. L. REV. 1 (1942); Patterson, *Foreward: Wage Garnishment—An Extraordinary Remedy Run Amok*, 43 WASH. L. REV. 735 (1968); Comment, *Garnishment of Wages in Pennsylvania—Its History and Rationale*, 70 DICK. L. REV. 199, 211 (1966); Note, *Garnishment in Kentucky—Some Defects*, 45 KY. L.J. 322 (1957); Comment, *Wage Garnishment in Washington—An Empirical Study*, 43 WASH. L. REV. 743 (1968); Note, *Wage Garnishment as a Collection Device*, 1967 WIS. L. REV. 759.

93. Note, *Federal Restrictions*, *supra* note 22, at 292, where the following prediction about Title III was made: "By eliminating exceptions to exemption coverage, and by establishing a federal minimum standard for state exemptions, many of the present economic evils of wage garnishment will be abolished."

94. See, e.g., Comment, *California Garnishment*, *supra* note 5; Comment, *The*

ment.<sup>95</sup> The California Law Revision Commission has repeatedly recommended sweeping reform of California's garnishment and attachment laws but has been continually rebuffed by the legislature.<sup>96</sup>

The harsh social and economic effects of garnishment may have been slightly reduced by federal or state legislation but they have not been eliminated.

To effectively analyze the social cost of California's wage garnishment laws, including the federal restrictions imposed by Title III, one must consider the extent to which the effects of the laws coincide with their stated or implied purpose. The California Law Revision Commission has stated that the primary objective of garnishment laws is to secure adequate protection for the wage earner's day-to-day income.<sup>97</sup> Implicit in

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*Effect of the Wage Garnishment Provisions of the Consumer Protection Act upon State Garnishment Laws*, 9 HOUS. L. REV. 537 (1972) [hereinafter cited as *Comment, Effect of Wage Garnishment*].

95. See, e.g., Brunn, *supra* note 20, at 1248; Kerr, *Wage Garnishment Should Be Prohibited*, 2 PROSPECTUS 371 (1969); Sweeney, *Abolition of Wage Garnishment*, 38 FORDHAM L. REV. 197, 223 (1969); Note, *Wage Garnishment*, *supra* note 76, at 157.

96. Recommendation Relating to Attachment, Garnishment, and Exemptions from Execution: Employees Earnings Protection Law, published in 10 CALIFORNIA LAW REVISION COMM'N, REPORTS, RECOMMENDATIONS & STUDIES 701 (1971), was first submitted to the legislature as Senate Bill 88 in 1972. The revised Recommendation Relating to Wage Garnishment and Related Matters, published in 11 CALIFORNIA LAW REVISION COMM'N, REPORTS, RECOMMENDATIONS & STUDIES 101 (1973), was then submitted to the legislature as A.B. 101 and A.B. 102 by Assemblyman Warren and Senator Song. It was subsequently amended and passed by the Assembly, only to die once again in the Senate. The second revised recommendation, Recommendation Relating to Wage Garnishment Exemptions, published in 12 CALIFORNIA LAW REVISION COMM'N, REPORTS, RECOMMENDATIONS & STUDIES 901 (1974), was submitted to the 1975 legislature as A.B. 90 and introduced by Assemblyman McAllister; but it, too, was not enacted. The latest recommendation, Recommendation Relating to Wage Garnishment Procedure, to be published in 13 CALIFORNIA LAW REVISION COMM'N, REPORTS, RECOMMENDATIONS & STUDIES (1977), was submitted to the 1976 legislature.

The only success the commission has had with respect to wage garnishment reform was the legislature's enactment of its 1971 Recommendation Relating to Attachment, Garnishment and Exemptions from Execution: Discharge from Employment, published in 10 CALIFORNIA LAW REVISION COMM'N, REPORTS, RECOMMENDATIONS & STUDIES 1147 (1971). See CAL. LAB. CODE § 2929 (West Supp. 1977). The enactment of this recommendation brought California in line with Title III by prohibiting discharge from employment for threatened garnishment or one garnishment judgment and by providing a civil penalty to aid in enforcement. See *Law Revision Comm'n Comment*, CAL. LAB. CODE § 2929 (West Supp. 1977). Enactment of the recommendation also slightly altered the wording of § 96 of the Labor Code to give the Labor Commissioner enforcement over claims made by employees for loss of wages as the result of discharge from employment for "the garnishment of wages" (rather than for "one garnishment of wages prior to a final order of a court"). *Law Revision Comm'n Comment*, CAL. LAB. CODE § 96 (West Supp. 1977).

97. The commission stated, "The primary objective of the garnishment measures

this purpose is a qualification on the moral axiom that a man owes a duty to repay his debts—that is, a man must also provide daily subsistence for himself and his family. Few would argue that the rights of a creditor should take precedence over the current needs of a debtor's child or spouse for food, shelter and clothing. This point of view is furthered by statutory protections<sup>98</sup> providing restrictions and exemptions for certain "necessary" amounts of a debtor's income so that he and his family may continue to subsist and remain productive members of the community.<sup>99</sup>

Against this background, wage garnishment laws were enacted with the hope of striking a balance between the economic benefit of having creditors armed with this collection device and the social costs these laws exact.<sup>100</sup> Congress, in enacting Title III, implied by its stated legislative purposes that making a man lose his job or fall into bankruptcy was too high a social price to pay for having an efficient collection device.<sup>101</sup> Similarly, California's garnishment law implies that depriving a man of those things necessary to sustain life is too high a social price for society to pay.<sup>102</sup> As seen below, garnish-

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recently enacted at the state and federal levels has been to secure—through restrictions on the amount which can be withheld—adequate protection for the wage-earner's day-to-day income." LAW REVISION COMM'N, *Garnishment Recommendation*, *supra* note 53, at 709.

98. See, e.g., CAL. CIV. PROC. CODE § 690.6(b) (West Supp. 1977); see note 46 *supra*.

99. In *Perfection Paint Prod. v. Johnson*, 164 Cal. App. 2d 739, 330 P.2d 829 (1958), Judge Peters expressed such a view:

The basic theory of such exemption [that which is *necessary* for the use of a debtor's family] is that a debtor and his family, regardless of the debtor's improvidence, will retain enough money to maintain a basic standard of living in order that the debtor may have a fair chance to remain a productive member of the community.

*Id.* at 741, 330 P.2d at 830-31.

100. See Funk, *The Wage Assignment and Garnishment as Collection Devices for Small Loans 2-3* (1962) (unpublished paper on file in the Office of the Attorney General, State Capitol, Madison, Wis.), cited in Note, *Wage Garnishment as a Collection Device*, 1967 WIS. L. REV. 759, 760. Social cost was defined by Funk as the monetary response society must make to alleviate financial difficulties caused by wage garnishment. *Id.* at 760 n.5.

101. 15 U.S.C. § 1671(a)(2)-(3) (1970); see note 36 *supra*. This section states that Congress acted to restrict wage garnishment because of its finding that unrestricted garnishment resulted in predatory extensions of credit, loss of employment by the debtor and frustration of the purpose and uniformity of bankruptcy laws.

102. California allows 100% protection of a debtor's earnings if he can show such wages are necessary for the support of his family and not incurred for the "common necessities of life." CAL. CIV. PROC. CODE § 690.6(b) (West Supp. 1977).

ment costs the debtor and society more than the inefficient device is worth.

### *Bankruptcy*

There is little doubt that the harshness of garnishment laws is strongly related to the number of personal bankruptcies.<sup>103</sup> Referees in bankruptcy have cited wage garnishment as the overriding factor in causing personal bankruptcies.<sup>104</sup> For-

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103. See, e.g., Brunn, *supra* note 20, at 1234-38; Comment, *Effect of Wage Garnishments*, *supra* note 94, at 539 n.15.

In 1971, the states with the lowest bankruptcy rates per 10,000 population were those with the most protective garnishment statutes (*i.e.*, those with 100% exemptions or liberal minimum flat allowances). For example, North Carolina had a bankruptcy rate of .8 per 10,000 population, Pennsylvania 1.3 and Texas 1.5; all three exempt 100% of a debtor's earnings from garnishment. Maryland exempts a flat \$120 per week and its rate was .9 per 10,000. All of the states with the highest bankruptcy rates, including Alabama (28.1), Nevada (23.4), Kansas (24.5), Tennessee (22.6), Oregon (20.8) and Maine (19.8), allow only the minimum exemption mandated by Title III. Note, *Wage Garnishment*, *supra* note 76, at 148, citing [1972] ADMIN. OFFICE OF THE U.S. CTS. ANN. REP. at table F-2 and 1966 and 1972 STATISTICAL ABSTRACTS.

A Michigan State University study found that 80% of persons who went bankrupt had been threatened by wage garnishment and that 75% indicated that garnishment, or the threat of it, was the reason they filed for bankruptcy. See *Hearings on H.R. 11601*, *supra* note 16, at 793-94.

Linn K. Twinem, chairman of the American Bar Association's Committee on Consumer Bankruptcy at the time of the hearings on H.R. 11601 said, "Garnishment frequently triggers bankruptcy." *Id.* at 766.

The text of the report prepared by the House Committee on Banking and Currency to accompany H.R. 11601 stated:

Testimony and evidence received by your committee [Subcommittee on Consumer Affairs] before which the hearings on H.R. 11601 were held clearly established a causal connection between harsh garnishment laws and high levels of personal bankruptcies. Statistics obtained from the Bankruptcy Division of the Administrative Office of the United States Courts further corroborate this conclusion.

H.R. REP. No. 1040, 90th Cong., 1st Sess. (1967), reprinted in [1968] U.S. CODE CONG. & AD. NEWS 1978.

104. Testimony taken during the hearings on H.R. 11601 further supported the causal connection between garnishment and bankruptcy:

The underlying causes of personal or consumer bankruptcies are: unemployment, over extension of credit, deficiency claims arising from the repossession of [goods sold on installment contracts], excessive interest rates and unusual medical and hospital bills; but the one overriding cause . . . is the garnishment or threat of garnishment of wages . . .

*Hearings on H.R. 11601*, *supra* note 16, at 419 (testimony of Estes Snedecor, referee in bankruptcy).

In H.R. REP. No. 1040, the Committee on Banking and Currency reported: "Eloquent testimony on the relationship between harsh garnishment laws and levels of personal bankruptcies [t]was [sic] received from four U.S. referees in bankruptcy. . . . Each of these experienced referees in bankruptcy endorsed the need for restricting the garnishment of wages." H.R. REP. No. 1040, 90th Cong., 1st Sess. (1967), reprinted in [1968] U.S. CODE CONG. & AD. NEWS 1978.



mer Secretary of Labor Willard Wirtz testified that there was widespread opinion among judges, lawyers, economists and bankruptcy referees, supported by considerable evidence, that a correlation existed between wage garnishments and the number of consumer bankruptcies.<sup>105</sup> Statistical data also supports the conclusion that Title III achieved one of its desired effects—to reduce the steadily increasing rate of personal bankruptcies by uniformly raising the minimum level of exemption to 75%.<sup>106</sup> Of the states whose exemption levels were raised by Title III to 75% in 1970, the median change in their bankruptcy rates during fiscal year 1970-71 was a *decrease* of 0.6%. However, in those states with exemptions at or above 75% and therefore unaffected by Title III, there was a median *increase* during the same period of 8.7%.<sup>107</sup> But, if large *numbers* of personal bankruptcies, as opposed to a slight reduction in the bankruptcy rate, are seen as too high a social price to pay for wage garnishment, Title III has failed.

California's bankruptcy rate climbed steadily during the ten year period from 1959 through 1969 reaching a peak of 19.8 bankruptcies per 10,000 population in 1968 and a near equal 19.2 rate in 1969.<sup>108</sup> In 1970, when the minimum exemption level was raised from 50% to 75%, the bankruptcy rate dropped significantly for the first time to 16.7 per 10,000.<sup>109</sup> Since 1970, the rate has remained fairly constant between 15-16 per 10,000; in fiscal year 1974, it was approximately 15.6. Translating these bankruptcy rates into actual numbers, it means that by June 30, 1974, 38,412 bankruptcy actions were pending in California<sup>110</sup> with Los Angeles acquiring the unenviable claim to "the bankruptcy capital of the country."<sup>111</sup> Nationally, the number

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105. *Hearings on S. 750 Before the Subcomm. of the Senate Comm. on Banking and Currency*, 88th Cong., 1st & 2d Sess. pt. 2, at 866 (1964).

106. See D. STANLEY & M. GIRTH, *BANKRUPTCY: PROBLEM, PROCESS, REFORM* 28-32 (1971); Shuchman & Jantscher, *Effects of the Federal Minimum Exemption from Wage Garnishment on Nonbusiness Bankruptcy Rates*, 77 COM. L.J. 360 (1972); Note, *Wage Garnishment*, *supra* note 76, at 147-51.

107. Shuchman & Jantscher, *Effects of the Federal Minimum Exemption from Wage Garnishment on Nonbusiness Bankruptcy Rates*, 77 COM. L.J. 360 (1972).

108. Note, *Wage Garnishment*, *supra* note 76, at 163 app. B.

109. *Id.*

110. In 1974, California had an estimated population of 20,907,000, THE CONFERENCE BOARD, *A GUIDE TO CONSUMER MARKETS 1975/76*, at 28 (1975), and during the fiscal year 1973-74, 32,555 new bankruptcies were filed, [1974] ADMIN. OFFICE OF THE U.S. CTS. ANN. REP. at 516, resulting in a bankruptcy rate per 10,000 population of approximately 15.6.

111. See 28 PERS. FIN. L.Q. REP. at 81 (1974). James E. Moriarty, Referee in

of personal bankruptcies spiraled from 18,510 in 1948 to 254,484 in 1975.<sup>112</sup> The 1975 total marked a 34.3% increase over the previous year and has been a "source of concern to legislators and judges alike."<sup>113</sup> In San Francisco, for instance, the bankruptcy court estimated its case load rose 30 to 50% between 1973 and 1974.<sup>114</sup> The Honorable Berkeley Wright expressed his concern by stating that, "there has been an increase in bankruptcy filings which is unparalleled in this history of the country."<sup>115</sup>

While the reasons for personal financial hardships which lead to bankruptcy are many,<sup>116</sup> it appears that wage garnishment, despite Title III, is still a strong factor in the eventual occurrence of those bankruptcies.<sup>117</sup> Those states which have

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Bankruptcy, United States District Court for the Central District of California, stated during the hearings on H.R. 11601, "California and particularly the central district of California, which encompasses the metropolitan area of Los Angeles, has been referred to as the bankruptcy capital of the world. The figures support this dubious honor." *Hearings on H.R. 11601, supra* note 16, at 431.

112. ADMIN. OFFICE OF THE U.S. CTS. AND THE FED. JUDICIAL CENTER, THE THIRD BRANCH, No. 11, at 4 (1975) [hereinafter cited as THE THIRD BRANCH].

113. THE THIRD BRANCH, *supra* note 112, No.1, at 2 (1976).

114. See 28 PERS. FIN. L.Q. REP. at 81 (1974).

115. 29 PERS. FIN. L.Q. REP. at 64 (1975). Judge Wright, Chief, Division of Bankruptcy, Administrative Office of the United States Courts, testified before the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee on H.R. 31 and H.R. 32.

The increase in bankruptcies is costly to creditors since most nonbusiness bankruptcies leave no assets to be distributed. "For the United States generally, only 13% of personal bankrupts had assets available to creditors. In these cases, creditors received about eight cents on the dollar." Countryman, *The Bankruptcy Boom*, 77 HARV. L. REV. 1452, 1453-54 (1964).

116. A study by the Brookings Institution found that 31% of those who were asked why they were in financial difficulty cited poor debt management as the primary cause. Twenty-eight percent cited family health problems as the cause while another 20% found the cause related to job problems. Debt collection harassment, legal proceedings, personal problems (drinking, gambling, marital problems) and major property losses were also cited by a significant number of those interviewed. D. STANLEY & M. GIRTH, *BANKRUPTCY: PROBLEM, PROCESS, REFORM* 47 (1971).

117. The two examples following are illustrative of how garnishment can cause bankruptcy. The first is from testimony by Estes Snedecor, referee in bankruptcy, during hearings on H.R. 11601:

Just the other day I had a bankrupt in court whose back was broken 3 years ago in an industrial accident. For over two years he and his family had existed on compensation from the industrial accident commission. Then for 6 months or more, on job training [sic] he became skilled for technical indoor work. Very soon after he obtained fulltime work and was rehabilitated and was released from the accident commission[,] his salary was garnished and being unable to maintain his family and meet the debts of his past misfortunes he resorted to bankruptcy in order to obtain a new start in life.

recognized this, and have effectively abolished wage garnishment of low-income debtors,<sup>118</sup> have a bankruptcy rate which is only one-fourth the national average. In light of the hope expressed by the Committee on Banking and Currency that "limitations on the garnishment of wages [would] relieve countless honest debtors driven by economic desperation from plunging into bankruptcy," it is not difficult to conclude, with an eye on the bankruptcy statistics, that Title III has not lived up to its expectations in this area.<sup>119</sup> Thus, if a significant reduction in the number of people forced into bankruptcy is still a bona fide congressional aim, abolition of wage garnishment, at least with respect to the low-income debtor, appears to be the only solution.

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It is not unusual for a collection agency to garnish the wages of some handicapped person trying to earn his living at the Goodwill Industries in Portland.

*Hearings on H.R. 11601, supra* note 16, at 421. The second example is from an article by James P. Gannon, staff reporter for the *Wall Street Journal*, which was submitted for the record during the hearings on H.R. 11601:

The records of Inland Steel Co. indicate how widespread wage attachment can be. Each payday the company makes such deductions from the paychecks of about 2,000 of its 22,000 production employees in the Chicago area, says Dorothy A. Lascoe, who handles the chore. Inland annually pays out more than \$500,000 of withheld wages to creditors, she adds.

Who are the people behind the statistics? Most often, they are working men like Franchot Tone Reed, a 29-year-old tire mounter for a Chicago-area truck manufacturer, who learned of garnishment the hard way.

In 1964 Mr. Reed traded his 1956 Plymouth in on a 1950 Cadillac and signed an installment sales contract to pay \$1,200 for the aging car in 48 weekly payments of \$25. After he defaulted, the dealer repossessed the car and had Mr. Reed's wages attached to pay off the contract. The deduction took 15% of his pay, the legal limit on garnishments in Illinois.

To "get cut loose" from his debts and the garnishment, Mr. Reed filed bankruptcy late in 1964. Last year [1965], Federal bankruptcy court in Chicago discharged Mr. Reed of \$2,195 in debts, including bills for jewelry and clothing as well as the costly old Cadillac.

*Id.* at 421.

118. See FLA. STAT. § 222.11 (1965) (100% exemption for heads of family); MD. COM. LAW CODE ANN. § 15-602 (1975) (75% or amount equal to \$120 multiplied by the number of weeks in which such wages were earned—except for four counties which abide by federal minimums); MASS. GEN. LAWS ANN. ch. 246, § 28 (West Supp. 1976) (\$125 per week exemption); PA. STAT. ANN. tit. 42, § 886 (Purdon 1966) (100% exemption); S.D. COMPILED LAWS ANN. § 15-20-12 (1967) (100% exemption where needed for support of the family); TEX. CONST. art. 16, § 28 (100% exemption).

These states had an average bankruptcy rate of 2.3 per 10,000 population while the national average in 1971-72 was 9.2. Note, *Wage Garnishment, supra* note 76, at 149.

119. H.R. REP. NO. 1040, 90th Cong., 1st Sess. (1967), reprinted in [1968] U.S. CODE CONG. & AD. NEWS 1963.

*Loss of Employment*

Since it is self-defeating to cause a debtor to lose the only means by which he can satisfy his debt, another of the aims of Title III was to protect default-debtors from being discharged from employment.<sup>120</sup> In the cities which Caplovitz studied, 19% of those garnisheed lost their jobs because of dismissal or fear of dismissal.<sup>121</sup> Before Title III went into effect, 48% of those employed by an employer not tolerating even one garnishment (now illegal) lost their jobs; 30% of those working for an employer not tolerating two garnishments lost their jobs; and 19% of those working for an employer who tolerated three or more separate garnishments lost their jobs.<sup>122</sup> Since Title III only prohibits discharging an employee for one garnishment proceeding, but not for more than one, 49% of the workers studied still would have lost their jobs had Title III been in effect.<sup>123</sup>

The Los Angeles study revealed that 54% of the employers believed that garnishment caused their employees to perform at less than maximum efficiency.<sup>124</sup> Arguably then, it would be easy for such an employer to dismiss the garnisheed worker and mask the true reason for his or her discharge. Once dismissed, the debtor is thrust into the ranks of the unemployed and is faced with an unemployment rate higher than at any time during the postwar era.<sup>125</sup> Unskilled workers employed in small, minimum-wage companies, although only slightly more apt to

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120. See 15 U.S.C.A. § 1671(a)(2) (1968) (effective July 1, 1970).

121. CAPLOVITZ, *supra* note 15, at 238. The cities were New York, Chicago and Detroit.

122. *Id.* at 240.

123. See note 33 and accompanying text *supra*. The Los Angeles study supports this finding. The average case of wage garnishment studied consisted of 2.4 garnishments while the average employer dismissed the debtor after an average of 2.6 garnishments—meaning roughly 40% of all garnished debtors ran the risk of losing their job because of garnishment. LOS ANGELES STUDY, *supra* note 64, at 35.

It should be noted that union membership had a significant effect in decreasing the percentage of those garnisheed who were discharged from employment. Only 13% of those garnisheed who were union members, compared with 33% of the non-union members, lost their jobs. CAPLOVITZ, *supra* note 15, at 241. The poor (earning under \$4,000 annually) were also more likely to lose their jobs than those in higher income brackets. *Id.*

124. LOS ANGELES STUDY, *supra* note 64, at 48.

125. St. Marie & Bednarzik, *Employment and Unemployment During 1975*, 99 MONTHLY LAB. REV. 15 (1976) [hereinafter cited as 1975 *Employment*].

The unemployment rate is approximately 8.4% nationally (7.8% for whites and 13.9% for blacks) or about eight million persons. The unemployment rate was a record 9.7% in California in the first half of 1975. Burke, *California—End of Growth*, BUS. REV. Summer, 1975, at 25.

be garnisheed than their counterparts in medium and large companies, are more than ten times as likely to lose their job as the result of garnishment than skilled workers.<sup>126</sup> Thus, the unskilled worker, the least likely to be able to find permanent employment, is the most likely to lose the job he already has and so desperately needs.

Added to this disastrous result, is the fact that a Title III violation is extremely difficult to prove and effective enforcement is nearly impossible.<sup>127</sup> Because of these inadequacies, loss of one's employment because of garnishment is still a reality for many low-income debtors. As one commentator concluded: "To create unemployment, even temporarily, because of a collection device is clearly an undesirable social cost. Losing one's job, with all its unhappy implications, causes human distress that is difficult to measure. Other collection devices do not create this problem."<sup>128</sup>

### *Inability to Subsist*

It has been stated that the underlying purpose of the 75% protection of a debtor's income is to allow him to keep enough of his wages to insure a minimum standard of living.<sup>129</sup> California's law, in theory, protects all of a person's wages necessary to support his family.<sup>130</sup> In reality, however, neither the federal nor the California garnishment provisions have had their desired effect.

The Bureau of Labor Statistics has estimated that, in an inflationary economy, the average wage-earner needs 85 to 90% of his salary, after taxes, to keep up with his daily expenses.<sup>131</sup> The typical garnishee, as shown by the Caplovitz study, is not the "average wage-earner"—he is typically black, young, head of a household, underpaid, undereducated and most likely a blue-collar worker. He is much more likely to need almost all of his daily wages just to subsist.<sup>132</sup>

Inflation has not been kind to the wage-earner. Prior to

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126. LOS ANGELES STUDY, *supra* note 64, at 5.

127. See note 40 and accompanying text *supra*.

128. Note, *Wage Garnishment as a Collection Device*, 1967 WIS. L. REV. 759, 761.

129. See text accompanying notes 97-98 *supra*.

130. See notes 46-50 and accompanying text *supra*.

131. U.S. BUREAU OF LAB. STATISTICS REP. NO. 237093, CONSUMER EXPENDITURES AND INCOME I 93 (1965).

132. Ryan & Maynes, *The Excessively Indebted: Who and Why?*, 3 J. CONSUMER AFF. 107, 112 (1969).

1968, annual wholesale price increases exceeded 3% only once. In 1971, wholesale prices increased 13.1%; in 1974, it reached 18.9%.<sup>133</sup> In addition, increases in the Consumer Price Index (CPI) prior to 1966 remained well below 2%. In 1973, consumer prices rose 6.2% and then skyrocketed another 11% in 1974.<sup>134</sup> The CPI rose another 9.1% in 1975.<sup>135</sup> On the other side of the coin, in 1973, the average annual increase in real compensation rose only 0.6% for the manufacturing sector and 0.3% for private non-farm workers.<sup>136</sup> Continuing from 1973, the average worker's real earnings suffered steady erosion.<sup>137</sup> The brunt of this shrinkage of real wages weighed most heavily upon low-income families as evidenced by the fact that food and shelter absorbed an average of 71% of their earnings, compared to 50% of the earnings of upper-income families.<sup>138</sup>

With regard to unemployment rates, male heads of households tend to have lower rates than the national average—they are more likely to possess the skills and education necessary to be productive workers and are likely to have a strong commitment to the work force.<sup>139</sup> The rate of unemployment for such male heads of households was about 2% in late 1973, but that rate jumped to 5.5% in 1975.<sup>140</sup> Therefore, the same general group that is most likely to be affected by wage garnishment—low-income, black, heads of households—has been rendered, by inflationary erosion of their wages, the least able to afford any loss of earnings. The 75% exemption required by Title III means little to a family head that needs 71% of his weekly earnings for daily subsistence. One of the supposed advantages of a percentage exemption is that it will keep pace

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133. Freedman, *Inflation in the United States, 1959-74: Its Impact on Employment, Incomes and Industrial Relations*, 112 INT'L LAB. REV. 125, 126 table 1 (1975) [hereinafter cited as Freedman].

134. *Id.*

135. 2 CHARTBOOK ON PRICES, WAGES AND PRODUCTIVITY No. 7, at 6 (1976).

136. Freedman, *supra* note 133, at 136.

137. Freedman stated: "From late 1973 onward, the average worker's real earnings suffered steady erosion, declining 1.8 per cent from October to November 1974 alone, when they were worth 5.6 per cent less than in November a year earlier." *Id.* at 135.

138. A congressional staff study has estimated that the impact of inflation has fallen at least one-third harder on low-income persons than on those of middle or upper incomes. *Id.*

139. 1975 *Employment*, *supra* note 125, at 16. The unemployment rate for female heads of households was 7% in 1973, but reached 10% by the second quarter of 1975. *Id.*

140. *Id.*

with inflationary rises in prices—yet, this is exactly what it has failed to do.

The flat exemption of thirty times the federal minimum wage<sup>141</sup> also does not afford much protection to those who need it most. Using 1967 as the base year, the real purchasing power of the dollar as measured by consumer prices steadily eroded until its relative worth in 1974 was a mere 68 cents.<sup>142</sup> Under Title III, a person earning \$69 per week or less, already well below the poverty line,<sup>143</sup> is exempt from any garnishment. For those earning above \$69 per week but less than \$92, the entire difference can be garnisheed; weekly earnings above \$92 are subject to 25% seizure.<sup>144</sup> This produces the seemingly inequitable result that a family head earning \$400 per week (over \$20,000 per year) will have \$300 per week exempted from garnishment, while the man earning \$75 per week, or \$3,900 per year (which is well below the poverty level), could still have \$6 taken from his paycheck each week. The fact that the poor man's earnings are 92% exempt appears unimportant upon the realization that he cannot totally protect his \$75 while his more affluent counterpart can protect \$300.<sup>145</sup>

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141. As of 1976, the federal minimum wage was increased to \$2.30 per hour. 29 U.S.C.A. § 206(a)(1) (West Supp. 1975).

142. THE CONFERENCE BOARD, A GUIDE TO CONSUMER MARKETS 1975/76, at 251 (1975).

143. Sixty-nine dollars per week yields an annual income of \$3,588. The poverty level, as set by the Department of Labor, Bureau of Labor Statistics, is \$4,540 per year for a nonfarm family of four. *Id.* at 140. The median family income for a white nonfarm family of four was \$12,595 in 1973 while for black nonfarm families it was \$7,596. However, 32.1% of black family heads earned less than \$5,000 per year. *Id.* at 127-28.

144. See 29 C.F.R. § 870.10(b) (1971).

145. Some states have attempted to remedy this situation by setting a minimum wage level below which no garnishment is allowed. For example, Massachusetts exempts \$125 per week but, above that minimum, 25% can be taken. MASS. GEN. LAWS ANN. ch. 246, § 28 (West Supp. 1976-77). Maryland exempts 25% above a floor of \$120 per week. MD. COM. LAW CODE ANN. § 15-602 (1975). New Jersey exempts 90% if earnings are less than \$7,500 per year and will reduce the exemption by court order if earnings are more than \$7,500. N.J. REV. STAT. § 2A:17-57 (1973). New York exempts \$85 per week and 90% above that. N.Y. CIV. PRAC. LAW § 5231(b) (McKinney Supp. 1976-77). New Hampshire exempts the greater of fifty times the federal minimum hourly wage or \$115 per week. N.H. REV. STAT. ANN. § 512.21 (1972). Alaska exempts a flat \$350 over a thirty-day period for a family head and \$200 for those who are single. ALASKA STAT. § 90.35.080 (1967). Hawaii exempts 95% of the first \$100 earned, 90% of the next \$100 and 80% of the excess of gross wages over \$200 per month or the equivalent per week. HAW. REV. STAT. § 612-1(a) (1969). Iowa exempts the federal minimum, but will not allow garnishment above \$250 per year per creditor except for child support. IOWA CODE § 627.12, 642.21 (1960 & Supp. 1976). Rhode Island exempts the federal minimum of thirty times the federal minimum hourly wage or 75%, whichever

California attempts to avoid this result by allowing a 100% exemption *if* the debtor can prove all his earnings are *necessary* to support his family.<sup>146</sup> However, if the debt is incurred for a "common necessary of life,"<sup>147</sup> total protection of earnings is lost. Again, the result is inequitable; a spendthrift family head earning \$100 per week who defaulted on the payment of an unusually expensive automobile<sup>148</sup> (not a common necessary) would be exempt from any garnishment if he could show all of his salary was needed to support his family. On the other hand, a head of household earning the same income who defaulted on a medical bill (a common necessary) could have \$25 per week taken out of his salary even though his family also needed all of his income. The common necessities exception to the 100% exemption is misdirected; it directs attention to classifying what the debt was for rather than ascertaining the needs of the debtor.<sup>149</sup>

The Los Angeles study revealed the shortcomings of the procedure for claiming an exemption under the California garnishment statute<sup>150</sup> in that less than 5% of those garnisheed

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is greater, but also exempts 100% of a debtor's earnings for one year following the discontinuance of welfare benefits. R.I. GEN LAWS § 9-26-4 (1956).

146. CAL. CIV. PROC. CODE § 690.6(b) (West Supp. 1977) (effective Jan. 1, 1977); see note 46 and accompanying text *supra*.

147. CAL. CIV. PROC. CODE § 690.6(b)(1) (West Supp. 1977) (effective Jan. 1, 1977). Common necessities are defined as those items which, in the hands of anyone, are necessary to sustain life (such as food, heat and shelter). *Los Angeles Fin. Co. v. Flores*, 110 Cal. App. 2d Supp. 850, 856, 243 P.2d 139, 143-44 (1952). For a discussion of the common necessities exception, see notes 47-49 and accompanying text *supra*.

148. See *Ratzlaff v. Portillo*, 14 Cal. App. 3d 1013, 92 Cal. Rptr. 722 (1971) (automobile held not a common necessary of life).

149. Largely because of these types of anomalies, the California Law Revision Commission has recommended that the exception for common necessities be eliminated and that the procedure for filing for an exemption be simplified. LAW REVISION COMM'N, *Garnishment Recommendation*, *supra* note 53, at 718-19. The Commission's proposed comment on common necessities states:

In actual operation, the effect of the "common necessities" rule in California was to decide the question whether competing creditors could reach a debtor's earnings neither from the debtor's point of view (the needs of the debtor's dependents were ignored) nor from the creditor's viewpoint (no consideration was given to whether the creditor was careful to advance credit to the debtor only after ascertaining that his credit worthiness showed an ability to pay or whether the creditor provided the debtor with quality goods or services). Rather, the claims of competing creditors for earnings could be decided on the technical, and usually irrelevant, issue of what was a "common necessary of life."

*Id.* at 774.

150. CAL. CIV. PROC. CODE § 690.50 (West Supp. 1977); see note 52 *supra*.



ever filed for an exemption.<sup>151</sup> However, those who *did file* enjoyed much success in the courts—their claims for exemptions were either totally or partially granted in 86% of the cases surveyed.<sup>152</sup> The average garnishee, entitled to an exemption if he filed for it, is generally not in a position to know of his legal rights and is ignorant of the entire exemption procedure. Not surprisingly, only 20% of those debtors garnishees retained an attorney and many did not know of the garnishment until informed of it by their employer.<sup>153</sup> As a result, few garnishees have their day in court—87% of the cases proceed by default.<sup>154</sup> When used, the procedure for filing an exemption can cause the debtor hardship because it can force him to lose his pay for a month while the right to his claim is being adjudicated.<sup>155</sup> With neither California garnishment laws nor Title III offering substantial protection to the low-income debtor, it is small wonder that the Los Angeles study concluded that garnishment and welfare are so closely related that they often become part of a recurrent cycle of poverty.<sup>156</sup>

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151. LOS ANGELES STUDY, *supra* note 64, at 4. The average worker in the study had a disposable income of less than \$300 per month and supported an average of 3.6 dependents.

A study of Seattle District Justice Courts found that exemptions were requested in only 6.5% of all garnishments. Comment, *Wage Garnishment in Washington—An Empirical Study*, 43 WASH. L. REV. 743, 797 at table 6, n.1.

152. See LOS ANGELES STUDY, *supra* note 64, at 4.

153. *Id.*

154. *Id.* at 5.

155. See CAL CIV. PROC. CODE § 690.50(a) (West Supp. 1977). For a discussion of the procedure for claiming an exemption, see note 52 *supra*.

156. The Los Angeles study stated:

[G]arnishment and welfare are intimately involved. A family may get on welfare as a result of loss of employment of the breadwinner because of wage garnishment. Then he may find employment again, get off welfare, only to be garnished again. And so the cycle is repeated. In such cases, the general public is subsidizing the collection of debts.

LOS ANGELES STUDY, *supra* note 64, at 105. A 1967 study conducted by the Santa Clara County Welfare Department found that 18% of the 231 garnishment cases studied were receiving welfare aid and another 11% had been on aid prior to the date of garnishment. *Id.* at 103.

A survey in Milwaukee of 634 families which first became independent of welfare during the months of October, 1964 and May, 1965, revealed that 23.3% of the families suffered wage garnishment by February, 1966. Huber, *Installment Credit Problems Among Public Welfare Recipients*, in *Hearings on H.R. 11601*, *supra* note 16, at 1027-31.

Further, in a study of 827 persons applying for general assistance relief, the Cook County Department of Public Aid in Chicago found that about 9% of the applicants had been fired from their jobs due to garnishments. *Hearings on H.R. 11601*, *supra* note 16, at 766.

## CONCLUSION

Wage garnishment is a powerful and popular remedy and is resorted to by creditors 95% of the time if given a choice among remedies.<sup>157</sup> Yet, as examined by this comment, garnishment punishes those groups of people least able to protect themselves within the legal structure and least able to weather further financial hardship—low-income, minority wage-earners barely making enough to feed, clothe and house their families. These people default on their debts most often because of circumstances beyond their control—loss of employment, illness or rising inflation. Neither Title III nor California's garnishment laws have sufficiently protected them. As a result, they continue to suffer loss of employment, bankruptcy and personal financial humiliation and frustration.<sup>158</sup> Such effects render wage garnishment as self-defeating as debtor's prison.<sup>159</sup>

In its application as a collection device, garnishment is a crude form of medicine. It aims to cure society of an illness—people who default on their debts. Yet as a medicine, it produces side effects more disastrous than the original malady it seeks to cure. By restricting garnishment, Title III and the California statutes may have cut down the dosage of medicine and reduced slightly the number afflicted, but neither has eliminated the harshness of its effects upon the low-income debtor. Wage garnishment will continue to drive wage-earning families "to the wall" until it is abolished.<sup>160</sup>

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Apparently recognizing the harsh consequences of letting recent welfare recipients be garnisheed, Rhode Island exempts 100% of a debtor's earnings for one year after the discontinuance of welfare benefits. R.I. GEN. LAWS § 9-26-4 (1956).

157. See LOS ANGELES STUDY, *supra* note 64, at 4.

158. See CAPLOVITZ, *supra* note 15, at 273-89. Harsh garnishment laws were cited as one of the major causes of the riots of 1968. REPORT OF THE NATIONAL ADVISORY COMMITTEE ON CIVIL DISORDERS 139-41 (1968).

159. See notes 2-4 and accompanying text *supra*.

160. *Sniadach v. Family Fin. Corp.*, 395 U.S. 337, 341-42 (1969).

